



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Order 97-11-40

Issued by the Department of Transportation  
on the 25th day of November, 1997

SERVED: November 25, 1997

Joint Application of

**FEDERAL EXPRESS CORPORATION**  
**and**  
**FLORIDA WEST INTERNATIONAL AIRWAYS, INC.**

for approval of a transfer of route authority pursuant to  
49 U.S.C. § 41105 (U.S.-Colombia All-Cargo)

**Docket OST-97-2764**

In the Matter of the Application of

**FLORIDA WEST INTERNATIONAL AIRWAYS, INC.**

for renewal of certificate and exemption authority

**Docket OST-97-2646**

**ORDER ON RECONSIDERATION**

**Summary**

By this order, we grant the petition of Fine Air Services for reconsideration of Order 97-10-23 and, upon reconsideration, affirm our decision to transfer the U.S.-Colombia certificate authority held by Florida West International Airways to Federal Express Corporation.

**Petition**

By Order 97-10-23, we renewed Florida West's U.S.-Colombia authority and approved the transfer of that authority to Federal Express.<sup>1</sup> On November 10, 1997, Fine Air Services, Inc., petitioned the Department for reconsideration of Order 97-10-23, arguing that the Department's order failed to resolve important issues raised in Fine's initial objections to the transfer--namely, whether a carrier may sell economic authority that the carrier has never used and whether a carrier

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<sup>1</sup> Order 97-10-23 was submitted for section 41307 review on October 23, 1997, and was served on October 29, 1997.

may sell economic authority when that authority remains valid only under the automatic extension provisions of the Administrative Procedure Act. In this case, Fine maintained that Florida West should not be permitted to sell valuable scheduled U.S.-Colombia authority in a limited entry market when it has never used that authority, and that the Florida West/Federal Express transfer application was not ripe for decision until the Department had first acted upon Florida West's certificate renewal application.

On November 18, 1997, Federal Express and Florida West filed a joint answer to Fine's petition. They argue that Florida West International Airways holds effective U.S.-Colombia certificate authority as a matter of fact and law as the corporate successor to Florida West Airlines, Inc.; that Florida West diligently sought authority from the Government of Colombia to resume its involuntarily suspended U.S.-Colombia operations and, indeed, recently received that authority and resumed its Colombia operations on October 28, 1997. They further argue that Fine has cited no law or precedent to support its assertion that Florida West's Colombia authority could not properly be transferred because it had not been renewed. They note finally that, in any event, contrary to Fine's assertions, the Department has now renewed Florida West's U.S.-Colombia certificate authority.

### **Decision**

We have decided to grant Fine's petition for reconsideration and, upon reconsideration, to affirm our decision to approve the Florida West/Federal Express route transfer.

In approving the route transfer, the Department concluded that transfer of Florida West's U.S.-Colombia route authority to Federal Express provided significant public benefits and would make effective use of our limited bilateral opportunities under the U.S.-Colombia aviation agreement, consistent with our international aviation policy objectives. We specifically noted that U.S. all-cargo carrier authority to serve Colombia is limited and that the use of these limited route rights is clearly in the public interest; and that Federal Express would operate five weekly flights, fostering U.S.-flag competition with foreign carriers in the market and benefiting U.S. shippers with its air express and expedited time-definite air freight service.

Fine has presented no new evidence or arguments to undermine these affirmative public interest findings. Rather, the carrier has questioned whether it was appropriate for the Department to permit authority to be transferred in circumstances where it was not being used or was effective only under the automatic extension provisions of the Administrative Procedure Act pending action on a renewal application.

As we explained in Order 97-10-23, the Department issued Florida West an effective certificate authorizing U.S.-Colombia operations on February 24, 1997; Florida West filed an application with Colombia less than one month after receiving an effective certificate (i.e. March 12, 1997), and as of the date we acted in this proceeding, the Colombian government had not yet authorized Florida West to resume services. Florida West could not have exercised its certificate authority without having also received the requisite operating authority from the Colombian government,

and the record shows in this case that Florida West had clearly sought such authority.<sup>2</sup> Against this background, we find nothing new in Fine's arguments on dormancy that would persuade us to disturb the route transfer.<sup>3</sup>

Concerning the matter of the renewal of Florida West's authority, we fully addressed that issue in our decision, including Fine's objections to Florida West's renewal application. Order 97-10-23 renewed Florida West's U.S.-Colombia certificate authority for that limited purpose, and then transferred that certificate authority to Federal Express. There is no reason in this proceeding to adjudicate the renewal of Florida West's full certificate authority, which is the subject of the proceeding in Docket OST-97-2646. Fine has presented no new arguments that convince us otherwise.

ACCORDINGLY,

1. We grant the petition of Fine Air Services, Inc. for reconsideration of Order 97-10-23 and, upon reconsideration, affirm our decisions in Order 97-10-23; and
2. We will serve this order on Federal Express Corporation, Florida West International Airways, Inc.; Fine Air Services, Inc.; the Ambassador of Colombia in Washington DC; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

**CHARLES A. HUNNICUTT**  
**Assistant Secretary for Aviation**  
**and International Affairs**

(SEAL)

*An electronic version of this order is available on the World Wide Web at  
<http://dms.dot.gov/general/orders/aviation.html>*

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<sup>2</sup> Even if Florida West's authority had been dormant, our decision would have been the same given the Department's policy on dormancy as it relates to transfer of authority. See, e.g., *American Airlines, Inc./Continental Airlines, Inc. Route Transfer Case*, Docket 46303, Order 89-9-7, at 4; and *American/TWA Route Transfer Case*, Docket 47320, Orders 91-3-28, at 15 and 91-4-47, at 38.

<sup>3</sup> We note that Florida West received authority from Colombia and has in fact already instituted service pursuant to its certificate. November 18, 1997, Joint Answer of Federal Express Corporation and Florida West International, at 3 and 4. See, also, Joint Application of Federal Express and Florida West for exemption in Docket OST-97-3091, at 2.